PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

BAILMENT.

Lien: Pledge of Goods

The Supreme Court of Pennsylvania holds in *Smith* v. *Equitable Tr. Co.*, 215 Pa., 418, that where an owner of goods agrees in consideration of advances, to give to a bank a lien on the goods which at the time are in the hands of a factor or agent of the owner, such a lien is valid and enforceable as against the general creditors of the owner, or his assignee for the benefit of creditors. Compare *White* v. *Gunn*, 205 Pa., 229.

BANKRUPTCY.

Provable Claim

In *In re Watkinson*, 146 Fed., 142, the United States District Court, E. D. Pennsylvania, decides that an increase of a bankrupt's estate as a net result of transactions between the bankrupt and a creditor within four months prior to the bankruptcy, where the last transaction was a payment on account of the indebtedness, is not sufficient to relieve the creditor from surrendering this last payment as preferential before he is permitted to prove the balance of his claim, when the account runs far back beyond the four-month period, and the transactions end with a large payment on account of the whole indebtedness. Compare *Yaple* v. *Dahl-Millikan Grocery Co.*, 24 S. C. R., 552.

Partnership

In *Hartman* v. *John Peters & Co.*, 146 Fed., 82, the United States District Court, M. D. Pennsylvania, decides that a conveyance by a partner of his individual property, although with intent to prefer a firm creditor, does not constitute an act of

BANKRUPTCY (Continued.)

bankruptcy by the firm, and will not sustain proceedings in bankruptcy against the partnership. Compare *Re Redmond*, Fed. Cas. No. 11632.

CARRIERS.

Discrimination

The Supreme Court of Florida decides in *State* v. *Atlantic &c. R. Co.*, 41 Southern, 705, that where a railroad company, a common carrier, is engaged in voluntarily transporting and delivering between stations on its line employees and freight for one incorporated public telegraph company and refuses similar services to others, without giving sufficient excuse for such refusal, the railroad company as a common carrier is guilty of unjust discrimination, and may be compelled to perform like services, for a reasonable compensation, for another incorporated public telegraph company, even though the service being voluntarily rendered is under a contract, by which it binds itself not to serve another company in such manner, when it is not shown that such service differs from that performed by the railroad company as a common carrier for other shippers except as to delivery between stations. With this decision compare the *Express Cases*, 117 U. S., 1.

Interrupted Journey

In *Bastaple* v. *Metcalfe*, L. R. (1906) K. B. 288, it appeared that a passenger on a tramcar took and paid for a ticket entitling him to travel for a certain distance; he alighted at an intermediate stopping place, walked a quarter of a mile in the direction of his destination, and got on to another tramcar, which was performing the same journey, in order to get to the point to which he might have travelled by the first car. He refused to pay the fare demanded of him on the second car, contending that he was entitled to complete his journey with his original ticket. Under these facts the King's Bench decides that the contract of carriage had been determined by the passenger's act, and that he was liable to be convicted for travelling on

CARRIERS (Continued.)

the second tramcar without paying his fare. Compare *Ashton* v. *Lancashire & Yorkshire Ry. Co.*, L. R. (1904) 2 K. B. 313.

Who Are Passengers

The statutory law of Massachusetts provides that a railroad may make contracts for the conveyance of passengers at such reduced rates of fare as the parties may agree on. In *Fitzmaurice* v. *New York, N. H. & H. R. R.*, 78 N. E. 418, the Supreme Judicial Court of that state decides that one riding on a ticket procured at a reduced rate by false representations to the effect that she was a student at a certain school was not a passenger. Compare *Galveston &c. Ry.* v. *Snead*, 4 Tex. Civ. App. 31.

Ejection of Passengers

In *Gulf C. & S. F. Ry. Co.* v. *Dyer*, 95 S. W. 12, the Court of Civil Appeals of Texas holds that where a passenger tendered the conductor the lawful amount of fare, he was under no duty to pay additional fare unlawfully demanded, or to get off the train at an intermediate station and buy a ticket in order to reduce the damages that might result from his ejection from the train. Compare *Railway Co.* v. *Foreman*, 73 Tex. 314.

CHARITIES.

Charitable Hospitals

A very interesting decision of the Supreme Court of New Hampshire appears in *Hewett* v. *Woman's Hospital Aid Ass'n* 64 Atl. 190, where it is held that a charitable hospital corporation was liable in damages for the negligence of its officers in causing injury to a servant employed by it. The negligence consisted in failure to notify a nurse employed by the hospital of the contagious nature of a disease to which she was assigned. A New Hampshire statute enters into the decision to some extent, but even so the case is of much interest and is worthy of comparison with other leading cases upon the general question. Compare *Fire Insurance Patrol* v. *Boyd*, 120 Pa., 634; 1 L. R. A. 417; and *Herns* v. *Hospital*, 66 Conn. 98; 31 L. R. A. 224.

CONSTITUTIONAL LAW.

Taxation

In *Nunnemacher* v. *State*, 108 N. W. 627, the Supreme Court of Wisconsin decides that the right to demand that property pass by inheritance or will is a natural and inherent right, which cannot be wholly taken away or substantially impaired by the Legislature, but is subject only to reasonable regulation. It is held nevertheless that under the application of this principle the tax law under consideration is valid. Two judges however dissent on the ground that the cases have gone too far in upholding taxation upon the transmission of property on the death of an owner. The case is worthy of study. Compare *Kochersperger* v. *Drake*, 167 Ill. 122, 41 L. R. A. 446.

Race Discrimination

Dealing with the field within which a state may lawfully pass regulations with respect to the different races, the Supreme Court of Tennessee holds in *Morrison* v. *State*, 95 S. W., 494, that a statute providing for the separation of white and colored passengers on street cars, but providing that it shall not apply to nurses tending children or helpless persons of the other race, is not, by reason of the proviso, arbitrary class legislation. It is further held that a provision of the same statute providing for the separation of white and colored passengers on street cars, whereby a conductor is authorized to change the line of division and to assign seats to passengers in accordance therewith, is not an unlawful delegation of the police power to agents of street car companies. Compare *Chesapeake & O. Ry. Co.* v. *Wells*, 85 Tenn. 614.

Full Faith and Credit

In *Converse* v. *Aetna Nat. Bk.*, 64 Atl., 341, the Supreme Court of Errors of Connecticut decides that in an action against a stockholder of a foreign corporation to enforce its liability for an assessment made by a court of another state in receivership proceedings, evidence that a statement of the record of such proceedings, to the effect that a certain person appeared as attorney in behalf of the corporation, was erroneous,

CONSTITUTIONAL LAW (Continued.)

and the attorney's appearance was unauthorized tended to impair the full faith and credit to which those proceedings were entitled, and was inadmissible. Two judges dissent.

Obligation of Contracts

In *Gamble* v. *Rural Independent School Dist.*, 146 Fed., 113, the United States Circuit Court of Appeals, Eighth Circuit, decides that a bona fide purchaser of negotiable bonds for value before maturity, and without notice of any infirmity therein, is entitled, as an incident to his ownership, to transfer the title to another, with all the rights with which he is vested; and such right, once accrued, is one of contract, which cannot be destroyed or impaired by state legislation. The rule in this particular case is applied to municipal bonds. See in this connection note to *Pickens Township* v. *Post*, 41 C. C. A. , 6.

CONTRACTS.

Restraint of Trade

In *Cory & Son* v. *C. W. Harrison*, L. R. (1906) A. C. 274, it appeared that respondent, a coal merchant carrying on both a home and an export business, sold the home business to the appellants and covenanted with them that he would not, solely or jointly with any other persons either directly or indirectly carry on or be concerned or interested in the coal trade in any part of Great Britain or the Isle of Man. He afterwards sold the export business to a company and took the purchase money in shares. The company afterwards sold the export business to a firm, the purchase money being payable to the company by instalments lasting over several years. The firm having begun to carry on both the home and an export business, the appellants brought an action against the respondent for breach of covenants. Under these facts the House of Lords decides that the respondent was not "concerned or interested in" the home business in the business sense which must be attributed to those words, and that there was no breach of covenant.

CORPORATIONS.

Directors

The Court of Appeals of Maryland decides in *Emerson* v. *Gaither*, 64 Atl. 26 that directors of a National Bank, while implied trustees, are not technical trustees and hence directors who had ceased to be such, prior to the failure of the bank, were entitled to plead limitations as a defense to a suit by a receiver of the bank to recover losses sustained by their malfeasance or gross negligence. See in connection herewith *Williams* v. *Halliard*, 30 N. J. Eq. 373.

Knowledge of Officers

It is held by the Supreme Court of Arkansas in *Baker* v. *Brown Shoe Co.*, 95 S. W., 808, that where, at the time plaintiff corporation authorized suit in attachment for the price of goods sold, its officers had knowledge of the buyer's fraud, warranting a rescission of the sale and a recovery of the goods, but failed to communicate such facts to its attorney, by whom the attachment suit was brought, plaintiff corporation was bound by the knowledge of its officers, and was therefore not entitled to claim that the commencement of such attachment suit was not an election of remedies, precluding the subsequent maintenance of replevin.

Representations of President

The Court of Civil Appeals of Texas decides in *Collins* v. *Chipman*, 95 S. W., 666, that in an action for false representations made by the president of a corporation by which plaintiff was induced to purchase stock therein, it was unnecessary to allege or prove that defendant had actual knowledge of the falsity of the representations, inasmuch as he was chargeable with such knowledge.

DAMAGES.

Subsidence of Land

It is decided by the Chancery Division in *Tunnicliffe* v. *West Leigh &c. Co.*, L. R. (1906) Ch. 22, that in assessing the damages recoverable by a surface owner for subsidence owing to the working of minerals under and adjoining his property, the court

DAMAGES (Continued.)

will take into account the depreciation in the market value of the property attributable to the risk of future subsidence. One judge dissents.

EQUITY.

The Supreme Court of Pennsylvania decides in *Smith* v. *J. B. Moors & Co.*, 215 Pa., 421, that where a pledgee of goods belonging to different persons, or upon which different persons have liens, mixes the proceeds of the sale of the goods so that it is impossible to identify any specific part of the money as having been derived from any specific goods, a court of equity will not prefer one claimant over another, but if there is a deficiency all will be required to abate in proportion. Compare *Thompson's Appeal*, 22 Pa., 16.

Mingling of Goods

EQUITY JURISDICTION.

In *Emerson* v. *Gaither*, 64 Atl. 26, the Court of Appeals of Maryland holds that equity has jurisdiction of a suit by the receiver of an insolvent corporation against delinquent directors to compel them to account for losses consequent on their fraud, malfeasance, or gross negligence in the performance of their trust in managing the corporation's business. It seems that in New York a somewhat different view prevails. Compare *Dykman* v. *Keeney*, 154 N. Y. 483.

Corporations

EVIDENCE.

In *King* v. *John Bond*, L. R. (1906) 2 K. B. 389 it appeared that the prisoner, a medical man, was indicted for feloniously using certain instruments on a certain woman with intent to procure her miscarriage. At the trial evidence was tendered on behalf of the prosecution to show that some nine months previously the prisoner had used similar instruments upon another woman with the avowed intention of bring-

Similar Facts

EVIDENCE (Continued.)

ing about her miscarriage, and that he had then used expressions tending to show that he was in the habit of performing similar operations for the same illegal purpose. The evidence was admitted and the prisoner convicted. Upon a case stated the King's Bench decides, two judges dissenting, that the conviction should be upheld.

GIFTS.

In *Parker* v. *Copland*, 64 Atl., 129, The Court of Errors and Appeals of New Jersey decides that where the sub-

Donatio Causa Mortis

ject of an alleged gift remains or is immediately replaced under the apparent dominion of the donor the gift can be sustained as a *donatio causa mortis* only upon satisfactory proof that such continuation or restoration of the donor's dominion was not an integral part of the donative transaction, concurred in as such by the deceased party to it.

HABEAS CORPUS.

Against the dissent of two judges the Supreme Court of Colorado decides in *Ex parte Stidger*, 82 Pac. 219, that

Grounds

a person adjudged guilty of contempt of court may have the judgment reviewed by writ of error, and an original proceeding by habeas corpus for his discharge from the imprisonment imposed will not be entertained. Compare *Cooper* v. *People*, 13 Colo. 337, 6 L. R. A. 430.

HUSBAND AND WIFE.

Although the general rule is that an antenuptial conveyance made by husband or wife cannot be void as

Fraudulent Conveyances

fraudulent with respect to the other, if it was made before an engagement was entered into with some different person, the Supreme Court of Iowa

HUSBAND AND WIFE (Continued.)

decides in *Beechley* v. *Beechley*, 108 N. W., 762, that an antenuptial voluntary conveyance if made with intent to defeat the marital rights of any person whom the grantor might subsequently marry, would be void as to such rights, whether the person that the grantor intended to marry was then selected or not. Compare *Chandler* v. *Hollingsworth*, 3 Del. Ch. 99, which is an excellent review of the authorities.

INSURANCE.

Construction of Policy: Children

In *Lehman* v. *Lehman*, 215 Pa. 344, it appeared that a widower with six children married a widow with one child and had by her two children. After his marriage he took out a policy of insurance payable to "his wife in trust for herself and their children". There was nothing in the circumstances under which the policy was taken, or in the subsequent conduct of the insured which tended to show that the insured intended to exclude his children by his first wife. Under these facts the Supreme Court of Pennsylvania decides that the children by the first wife were entitled to share in the proceeds of the policy. A policy of life insurance it is said if not a testament is like the provisions of a will, to be liberally construed in favor of the ones who may naturally be presumed to have been the special objects of bounty. Compare *Stigler's Excutrix* v. *Stigler*. 77 Va. 163.

Policy of Mortgagee

The Supreme Court of Kansas decides in *Fort Scott &c. Ass'n* v. *Palatine Ins. Co. &c.* 86 Pac. 142, that where a mortgage on real estate is secured in part by an insurance policy issued to the mortgagor, and the mortgagee subsequently receives a conveyance of the mortgaged property, and holds the same

INSURANCE (Continued.)

as security for the mortgaged debt, the mortgage will not become merged in the legal title, so as to relieve the insurance company from liability, in case of fire. Compare *Freeman* v. *Paul*, 3 Me. 260.

INTERSTATE COMMERCE.

The Court of Civil Appeals of Texas decides in *St. Louis S. W. &c. Co.* v. *Arkansas &c. Co.*, 95 S. W., 656, that Congress having passed no law regulating the disposition of freight shipped from a point without a state to a consignee within a state, where such consignee declines to receive the freight, and the shipper refuses to give directions for its disposition or assume further control over the same, a state statute authorizing a carrier, warehouseman, etc., after the expiration of six months to sell the freight on twenty days' notice after advertising, etc., was not in violation of the commerce clause of the Federal Constitution. See in connection herewith *Cardwell* v. *American Bridge Co.*, 113 U. S., 205.

What Constitutes

JOINT STOCK COMPANIES.

The Supreme Judicial Court of Massachusetts holds in *Taber* v. *Breck*, 78 N. E. 472, that where a joint-stock company with transferable shares is organized under an agreement that the death of a member shall not work a dissolution and that the property shall be held under a declaration of trust by certain stockholders, the form of the association being intended to give the partnership the attributes of a corporation without its form or any change in the liability for firm debts, the right to contribution will be ascertained according to the shares held by each member, and the death of a partner will not require a division of the assets, but will entitle his legatees or distributees to succeed to his shares.

Attributes: Rights of Shareholders

JUDGMENTS.

In *Skjelbred* v. *Southard*, 108 N. W. 487, the Supreme Court of North Dakota decides that a judgment rendered in accordance with the statutory procedure to quiet title is void as to those who are not named in the published summons otherwise than as "unknown heirs" of a certain person, and who are not personally served and do not appear in the action. The extent to which the proceeding to quiet title is used, particularly in the West, renders this decision of very great practical importance. It is also interesting in connection with the Torrens System of registering title to land in view of the fact that the constitutionality of that system has never been clearly decided by the United States Supreme Court.

Jurisdiction: Validity

MARRIED WOMEN.

The Supreme Court of Arkansas holds in *Arkansas Stables* v. *Samstag*, 94 S. W. 699, that where a married woman holding stock in a corporation as a part of her separate estate was elected president thereof, she was thereby freed from the disability of coverture, as provided by statute, and was therefore personally liable for the debts of the corporation for failure to file the annual statement of the corporation's affairs required by law. Compare *Keyser* v. *Hitz*, 133 U. S. 138.

Officers of Corporations

MORTGAGES.

In *Baker* v. *Hutchinson*, 41 Southern, 809, the Supreme Court of Alabama decides that the fact that the name of the wife of the mortgagor does not appear on the notes, as security for which the mortgage was given, as recited in the mortgage, does not impair the mortgage as security for the notes as obligations of the husband.

Variance in Note

MUNICIPAL CORPORATIONS.

In *Bloomsburg Imp. Co.* v. *Bloomsburg*, 215 Pa., 452, the Supreme Court of Pennsylvania decides that a borough has no power to enter into a contract to lease from a private owner an enclosed pleasure park within the borough limits, for the purpose of deriving a revenue therefrom by subletting or charging the public for admission; and if, in pursuance of such an agreement, the borough enters into possession of the park no recovery can he had from the borough as for the use and occupation of the same. Compare *Whelen's Appeal*, 108 Pa., 162.

Powers

NAVIGABLE WATERS.

In *Berry* v. *Hoogendoorn*, 108 N. W., 923, the Supreme Court of Iowa, decides that where plaintiff and his grantors were riparian owners, plaintiff was entitled to such portion of the accretions as would give to him his corresponding frontage on the new river bank, and could not be limited to so much of the accretions in front of his property as was necessary to make it rectangular in form, and further holds that where the thread and banks of a stream are changed by accretions, etc., the new shore lines should be apportioned among the owners of premises abutting on the old shore line, so that each shall have the same proportion of the new line as he had of the old. Compare *Stern* v. *Fountain*, 112 Ia., 96.

Riparian Rights:

NEGLIGENCE.

The Court of Civil Appeals of Texas decides in *Chicago &c. Ry. Co.* v. *Groner*, 95 S. W., 1118, that where the negligence of a carrier in failing to properly warm a waiting room produced a condition of health in a passenger obliged to wait in such room rendering the passenger susceptible to tuberculosis, and

Proximate Cause

NEGLIGENCE (Continued.)

as a natural and probable consequence she became affected with the disease and died thereof, the carrier was liable.

Gas Company

In *Shirey* v. *Consumers Gas Company*, 215 Pa. 399, it appeared that in an action against the Gas Company to recover damages for injuries caused by the explosion of gas it was admitted that defendant's gas main broke, that gas escaped therefrom, and found its way into the plaintiff's house where it exploded. A policeman testified that he had smelled gas in the street in the vicinity a night or two before the explosion. Three witnesses testified that the fractured edges of the gas pipe when examined after the explosion showed in part indications of an old fracture. There was a dispute as to the cause of the break of the gas main. Under these facts the Supreme Court of Pennsylvania decides that the case was for the jury and that a verdict and judgment for plaintiff should be sustained, the principle laid down being that a Company dealing with a substance so dangerous as gas must be held to a high degree of care and the exercise of every reasonable precaution in guarding against accidental injury. This decision is of especial interest in connection with the disastrous explosion occurring during the excavations for the Philadelphia Subway. Compare *Heh* v. *Consolidated Gas Co.* 201 Pa. 443.

Parent and Child

In *O'Brien* v. *Philadelphia*, 215 Pa. 407, the Supreme Court of Pennsylvania decides that where a mother, who has been deserted by her husband supports entirely through her own exertion a minor child, she may maintain an action in her own name to recover for loss of services of the child resulting from personal injuries to the child caused by the negligence of another person. With this case compare *Kelley* v. *Pittsburg &c. Traction Co.* 204 Pa. 623.

PUBLIC SERVICE CORPORATIONS.

Discriminations

A very interesting case with respect to discriminations by a public service corporation appears in *Atlanta Terminal Co.* v. *American Baggage & Transfer Co.*, 54 S. E. 711, where it is decided by the Supreme Court of Georgia that a corporation, acting for a common carrier in the matter of providing a baggage room and of receiving and checking baggage for all the patrons of the common carrier, has a right to conduct in its baggage room an independent private enterprise, by which it receives and keeps on storage, parcels of prospective passengers until they are called for by the passenger after he has obtained his ticket or other evidence of the right of transportation, and then, upon exhibition of the same, to check the parcel as baggage to be forwarded to the point designated by the ticket.

In the same case, however, the rule is laid down that the operations under the private enterprise thus conducted however, must be subordinate to the service which must be rendered to persons who tender parcels to be checked as baggage, duly accompanied by tickets or other evidence of the right of transportation. Compare with this decision *Donovan* v. *Penn Co.* 199 U. S. 279; and *Kates* v. *Atlanta Baggage & Cab Co.*, 107 Ga. 637, 46 L. R. A. 31.

TAXATION.

Tax Titles

The Supreme Court of Washington decides in *J. W. Wheeler Co.* v. *Pates*. 86 Pac., 625 that a Grantee of a tax title subsequently declared void is entitled to recover from the owner the taxes paid by himself and the prior holders of the tax title, but at the same time it is held that a holder of a void tax title, recovering taxes paid subsequent to the acquisition of the title, is entitled only to recover the taxes paid, together with legal interest.

TRUSTS.

Expenses

In *Jordan* v. *Jordan*, 78 N. E. 459, the Supreme Judicial Court of Massachusetts decides that a broker's commission for the sale of a parcel of real estate belonging to a trust estate was properly paid from the income, rather than the principal. Compare *New England Trust Co.* v. *Eaton*, 140 Mass. 532.